

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

WEIHARIK GARCIA, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

SOUTH SHORE HYUNDAI, LLC

Defendant.

Civil Action No. 2:24-cv-01305

**DEFENDANT JS HYUNDAI OF VALLEY STREAM, LLC D/B/A SOUTH SHORE
HYUNDAI, IMPROPERLY PLED AS SOUTH SHORE HYUNDAI, LLC'S
MOTION TO DISMISS THE PLAINTIFFS' CLASS ACTION COMPLAINT
PURSUANT TO FED. R. CIV. P. 12(b)(6)**

Pursuant to Fed. R. Civ. P. 12(b)(6), Defendant JS Hyundai of Valley Stream, LLC d/b/a South Shore Hyundai, improperly pled as South Shore Hyundai, LLC (“SSH”), moves that the Court enter an Order dismissing with prejudice the Class Action Complaint of the Plaintiff, Weiharik Garcia. This is a purported consumer protection action in which Garcia contends that SSH is liable for violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq. (“TCPA”). In her Complaint, Garcia asserts that SSH violated the TCPA by (1) sending her texts utilizing an automated telephone dialing system (“ATDS”) without her consent or permission and (2) sending her texts despite the fact that she was registered on the National Do-Not-Call Registry (“DNCR”). Garcia also alleges that SSH is liable under the Pennsylvania Telemarketer Registration Act (“PTRA”) and Unfair Trade Practices/Consumer Protection Law (“UTPCPL”) for sending her texts without previously registering as a telemarketer. Garcia asserts that SSH’s marketing campaign was directed at thousands of people across the country, and she seeks to

represent several purported nationwide classes of individuals who allegedly received similar texts.

As discussed in greater detail in the accompanying Memorandum of Law, Garcia's claims are fatally flawed and must be dismissed. As an initial matter, Garcia fails to articulate actionable violations of the PTRRA because SSH is not a "telemarketer" within the meaning of the statute and was not required to register in order to send text messages like the ones alleged in the Complaint. Garcia's companion UTPCPL claim (which is the vehicle through which she seeks recovery for the alleged PTRRA violations) is subject to dismissal for the separate reason that Garcia has not alleged a purchase or lease of a good, which is a prerequisite to maintaining an action under the statute. Garcia's TCPA claim relative to the DNCR is fatally flawed because it is clear from DNCR records (of which the Court may take judicial notice) that Garcia's telephone number was not registered with the DNCR at the time she received the texts at issue on March 19, 2024. With respect to the TCPA claim alleging use of an ATDS, Garcia fails to plausibly allege that SSH utilized an ATDS and that any such dialing equipment actually used a sequential or randomized number generating function as opposed to selecting numbers from a predetermined list of intended recipients.

Because it is clear that Garcia has not, and cannot, articulate actionable claims against SSH, the Court should dismiss her Class Action Complaint with prejudice.

WHEREFORE, SSH respectfully requests that this Honorable Court dismiss Plaintiffs' Class Action Complaint with prejudice.

Respectfully submitted,



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Dated: June 21, 2024